



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

GOVERNOR WENTWORTH EDUCATION ASSOCIATION,
NEA-NEW HAMPSHIRE

Complainant

v.

GOVERNOR WENTWORTH REGIONAL SCHOOL BOARD

Respondent

CASE NO. T-0229:6

DECISION NO. 83-60

APPEARANCES

GOVERNOR WENTWORTH EDUCATION ASSOCIATION, NEA-NH

Anne Richmond, Esq.
Wally Cumings, UniServ Director

GOVERNOR WENTWORTH REGIONAL SCHOOL BOARD

Bradley F. Kidder, Esq.

Also in attendance

John Palmer, WASH Radio
Richard Magnifico, Asst. Supt.
Linda Fairchild, GWEA
Kent Lauber, GWEA
Robert C. Smith, GWRSB
Margaret Walsh, GWRSB
Ellen Laase, GWRSB
Bruce R. Wiggin, GWRSB

John A. Redmond, GWRSB
Robert Arlin, Supt. of Schools
Dave Tsgar, Granite State News
Bruce Lorry, Granite State News
William Antonucci, GWRSB
Joanne Murphy, GWRSB
Raymond Lambert, GWEA
Bertha Weeks, U.S. Mail Carrier

BACKGROUND

This complex case was heard by the Board on three separate hearing dates: June 30, September 23, and September 29, 1983. The factual history will be reviewed prior to the procedural setting.

FINDINGS OF FACT

Negotiations between the Governor Wentworth Regional School Board (GWRSB) and the Governor Wentworth Educational Association (GWEA) began in the Fall of 1982. In early October, substantial discussions were had concerning the adoption of "ground rules". GWEA proposed ground rules that included a provision specifically negating the rules in the event of impasse. This proposal also provided for "no public news

releases unless agreed upon by both parties." (School Board Exhibit 2).

GWRSB responded with proposed ground rules which were virtually identical, except for the provision regarding impasse. (School Board Exhibit 3). Apparent agreement was reached on the School Board proposal, with the addition of the provision for a recording secretary. (School Board Exhibit 4). Approved minutes of these meetings reflect an agreement to delete this provision. (School Board Exhibit 5). GWEA representatives testified at the hearing that, while the provision was deleted from the written ground rules, there existed an oral understanding between the parties that the ground rules would no longer be in effect upon declaration of impasse. It should be noted at this point that the agreed ground rules were entitled "Proposed Ground Rules for Negotiation Sessions" (emphasis added).

Following a negotiations session on December 2, 1982, impasse was declared by GWEA, and accepted by GWRSB. The collective bargaining agreement in force at that time contained the following provision regarding the selection of a mediator:

"When the impasse is declared, the parties will attempt to determine a mutually acceptable mediator, or failing agreement, shall request the Public Employee Labor Relations Board to appoint a mediator..."

GWEA wrote to the PELRB on December 2, 1982, seeking assistance in the appointment of a mediator, and later cancelled a scheduled meeting with GWRSB representatives for the purpose of selecting a mediator. Several letters went back and forth between the parties concerning this selection, with the GWRSB generally desiring to exchange lists of acceptable mediators, and the GWEA generally desiring to rely upon the PELRB to appoint one. Finally, on February 10, 1983, the PELRB appointed one Richard G. Higgins. See generally Association Exhibit 2.

On December 22, 1982, GWEA filed an unfair labor practice charge alleging bad faith bargaining on the part of GWRSB for its refusal to negotiate a reduction in force clause and a standing facilities committee clause. This petition was later dropped, as set forth more fully below.

Mediation sessions were scheduled during the week of February 28, 1983, having in mind the scheduled annual School District meeting on Saturday, March 5, 1983. During this week GWEA members circulated various fliers in public places within the School District. (Association Exhibits 5,7; School Board Exhibit 11). In addition, representatives of GWEA had interviews with the local radio station and newspaper at or about this time. These events become significant later.

No written mediation ground rules were adopted. Various witnesses described the understanding concerning the ground rules in different ways. Mr. Antonucci, one of the representatives of the School Board, along with Mrs. Walsh and Mr. Redmond, felt that no "media releases" were allowed. Mr. Antonucci interpreted this language quite broadly.

In any event, mediation resulted in a tentative agreement on the event of March 4, 1983. (Association Exhibit 3). A reduction in force provision was included in the tentative agreement, and GWEA specifically agreed to drop the pending unfair labor practice charge upon ratification of the tentative agreement by the GWRSB. The tentative agreement was signed by Mrs. Walsh on behalf of GWRSB, and Ms. Fairchild on behalf of GWEA.

Shortly after the close of the mediation session, various members of the GWRSB negotiating team learned of the fliers distributed by GWEA, and that other members of the GWRSB were extremely distressed by it. In addition, the GWRSB negotiators learned that other GWRSB members were equally distressed with the inclusion of a provision regarding reduction in force in the tentative agreement.

Prior to the annual School District meeting on the morning of March 5, 1983, the GWEA ratified the tentative agreement. A different story was unfolding at the GWRSB meeting. Although Mrs. Walsh and Mr. Antonucci spoke in favor of the tentative agreement, it failed on a tie vote, with Mr. Antonucci abstaining and Mr. Redmond opposing. An affirmative vote by either of them would have resulted in ratification.

After GWEA learned that the primary objection of the GWRSB was the reduction in force clause, it was suggested that the tentative agreement be ratified without it. As so amended, the tentative agreement was ratified by both bodies during a recess of the annual meeting.

Preparation of the formal agreement for signing did not occur until mid-April, after GWEA learned of the lineup on the first vote by the GWRSB on the tentative agreement. This knowledge prompted a letter from GWEA to GWRSB dated April 15, 1983 (Association Exhibit 7, School Board Exhibit 10), reserving its right to file an unfair labor practice charge concerning the reduction in force provision. Shortly thereafter, the GWRSB decided not to issue any individual contracts in accordance with the new collective bargaining agreement until all matters had been resolved. (Association Exhibit 8). This brings us to the procedural setting of the case.

Needless to say, because of the actions of the GWRSB on March 5, 1983, the GWEA did not drop its previously-filed unfair labor practice. In addition, GWEA filed a second unfair labor practice charge on April 28, 1983, complaining that the GWRSB, in conspiracy with its counsel, bargained in bad faith in that not all members of the GWRSB negotiating team supported the tentative agreement. GWEA sought modification of the collective bargaining agreement to include the items deleted from the tentative agreement, together with other relief.

GWRSB thereafter moved for separate hearing dates on the two unfair labor practice charges, and scheduling of the second charge first. GWEA objected to this request. On the eve of the original hearing date on both unfair labor practice charges, however, GWEA voluntarily dismissed the first unfair labor practice charge, and thus the motion became moot. Although not requested until a later hearing, the GWRSB now seeks to recover its attorney's fees incurred in preparing to defend the first unfair labor practice charge, alleging bad faith on the part of GWEA in waiting until the eleventh hour to drop the complaint.

In answer to the second unfair labor practice charge, GWRSB denied any bad faith bargaining, or conspiracy to do so. Furthermore, the GWRSB alleged waiver of these issues by GWEA in having signed the new collective bargaining agreement. In addition, GWRSB affirmatively alleges an unfair labor practice on the part of GWEA, for refusing to meet to select a mediator, and violating ground rules for negotiation and mediation by its releases to the public. The GWRSB complaint sought broad relief. GWEA's answer to the counter-claim was essentially a general denial.

In the course of the hearing, GWEA amended its unfair labor practice charge without objection by the GWRSB. The amendment withdrew the request that this Board modify the collective bargaining agreement, and added certain requests concerning enforcement of the collective bargaining agreement and accompanying individual contracts. A further amendment without objection basically withdrew these previously-added requests. The Board specifically finds that all parties to this proceeding and their agents have, at all times material hereto, acted in good faith and without intent to violate RSA 273-A. This finding is critical to the disposition of certain issues.

RULINGS OF LAW

GWEA Unfair Labor Practice Charge

The essence of the unfair labor practice charge by GWEA is the failure of Mr. Antonucci and Mr. Redmond to support the tentative agreement by in fact voting for it. GWEA argues that there is a duty to support the tentative agreement imposed on the negotiating team members, violation of which is bad faith bargaining, and thus an unfair labor practice.

GWRSB does not strongly dispute that some duty to support exists; but argues that actual voting in favor of a tentative agreement is not required, as negotiating team members are free to exercise independent judgment when voting as part of their ratifying body.* As a preliminary matter, GWRSB further argues that the unfair labor practice was waived by GWEA when it ratified the modified contract without a specific prior reservation of rights.

The question of waiver presents a difficult issue. On the one hand, our principles should encourage resolution of disputes and finality of the bargaining process, a goal which should be furthered by finding that all alleged procedural unfair labor practices are waived upon reaching agreement on the contract. On the other hand, it would be inefficient to require a party to hold up signing a contract in order to preserve an issue, particularly in view of the length of time usually required by this Board to process a complaint.

Short of establishing a specific rule, it is preferable for the parties to provide in their agreement whether all claims of violation are waived or reserved, as was done in the tentative agreement with respect to the first unfair labor practice charge. However, in view of our resolution of the merits of the pending unfair labor practice, we need not face this difficult issue, and we therefore save it for another day.

This Board recognizes that there is a duty to support a tentative agreement imposed on negotiating team members. Dover School Committee v. Dover Teachers' Union (Decision No. 83-19) is a signpost on the way to this conclusion. This duty, however, would be a hollow shibboleth if it did not extend to actually voting to support the tentative agreement. The potential for superficial support merely to comply with the duty, while actually failing to vote in favor, would be overwhelming. Therefore, we hold that the duty does extend to voting, violation of which is a prohibited practice, bad faith bargaining.

*GWRSB also argues that its negotiating team members were "released" from any such obligation by virtue of alleged unfair labor practices on the part of GWEA. Our ruling infra on this issue answers this argument, but we further observe that the commission of an unfair labor practice by one party does not entitle the other to do likewise. A contrary rule would invite chaos.

In this case, we have specifically found that the parties acted in good faith; in addition, the rule just announced was not clearly the law of this State at the time of the events in question. This being the case, although we find that the actions of Mr. Antonucci and Mr. Redmond constitute an unfair labor practice, we decline to find them or GWRSB guilty of an unfair labor practice. See District 1199, New England Health Care Employees Union v. Riverside Rest Home. (Decision No. 81-34).

GWRSB Unfair Labor Practice Charge

Instead of meeting with the GWRSB to select a mediator after declaring impasse, the GWEA simply contacted this Board to seek appointment of one. Failure to meet to select a mediator is an apparent violation of the contract language quoted above, and the parties are encouraged in the future to fully utilize the processes established by their collective bargaining agreement prior to seeking assistance from this Board. However, given the good faith of GWEA, the ultimate appointment of a mediator, and the de minimus nature of the act, we decline to find an unfair labor practice.

The second aspect of the GWRSB unfair labor practice charge is the press and public releases caused by the GWEA after impasse was declared and during mediation. We note at the outset that the so-called ground rules referred to "negotiation sessions" and "media releases". In addition to the testimony concerning verbal side agreements, the very terminology used by the parties in their written rules creates sufficient ambiguity to justify our refusal to find an unfair labor practice where the releases occurred after impasse, and the releases during mediation were in the form of public distribution of fliers. Finally, the disseminated material is, in our view, fairly innocuous, and not designed to impair the bargaining capacity of the GWRSB representatives. We therefore refuse to find an unfair labor practice.

GWRSB Report of Attorney's Fees

GWRSB seeks counsel fees incurred in preparation for the first unfair labor practice charge of GWEA, which was dropped on the eve of the hearing date. No evidence of bad faith on the part of the GWEA in commencing or dismissing this case was shown. Finally, no objection to the voluntary dismissal was made by GWRSB at the time it occurred, nor any reservation of a right to claim counsel fees. For these reasons, the request is denied.

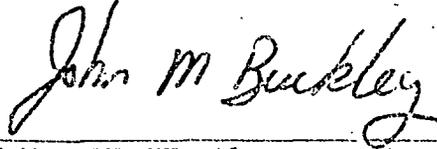
Summary

Although we find the actions of the GWRSB to constitute an unfair labor practice, we decline to so find here for the reasons stated above; likewise, no unfair labor practice on the part of GWEA has been found, and the GWRSB request for counsel fees is denied.

We observe in passing that the problems giving rise to these cases resulted principally from miscommunication, misinterpretation, and misunderstanding, rather than bad faith or wrongful actions on the part of either party. It is our unanimous hope that the parties will leave this proceeding with a greater awareness of their rights and obligations in collective bargaining, and that future relations between them will be improved as a result.

DECISION

For the reasons set forth above, this Board dismisses all unfair labor practice charges, and denies the GWRSB request for attorney's fees.



JOHN M. BUCKLEY, Alternate Chairman.

Signed this 7th day of December, 1983.

By unanimous vote. Alternate Chairman, John M. Buckley, presiding, members Seymour Osman and Russell Hilliard present and voting. Also present, Executive Director, Evelyn C. LeBrun.